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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAURA HOFFMAN, an individual, on )  
behalf of herself and all others )  
similarly situated, )  
  
Plaintiff, )  
  
vs. )  
  
CITIBANK (SOUTH DAKOTA), )  
N.A., and DOES 1 through 10, )  
inclusive, )  
  
Defendant. )  
  
\_\_\_\_\_ )

Case No. SACV06-571 AJG(MLGx)  
  
**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT  
AND CONDITIONALLY  
CERTIFYING SETTLEMENT  
CLASS AND APPOINTING CLASS  
COUNSEL**

1 WHEREAS the parties to this action, plaintiff Laura Hoffffman (“Plaintiff”)  
2 and defendant Citibank (South Dakota), N.A. (“Citibank”), have agreed, subject to  
3 Court approval following notice to the proposed Settlement Class (as described in  
4 Paragraph 5 below) and a hearing, to settle this action upon the terms and  
5 conditions set forth in the Settlement Agreement lodged with this Court; and

6 WHEREAS, for purposes of this Order, capitalized terms shall have the  
7 meaning ascribed to them in the Settlement Agreement;

8 NOW, THEREFORE, based upon this Court’s review of the Settlement  
9 Agreement and all of the files, records, and proceedings herein, and it appearing to  
10 the Court, upon preliminary examination, that the Settlement Agreement and  
11 settlement appear fair, reasonable, and adequate, and within the range of possible  
12 approval, and that a hearing should and will be held after notice to the Settlement  
13 Class (as described in Paragraph 5 below) to confirm that the Settlement  
14 Agreement and settlement are fair, reasonable and adequate and to determine  
15 whether the settlement should be approved and final judgment entered in this  
16 action based upon the Settlement Agreement;

17 IT IS HEREBY ORDERED THAT:

18 **1. Preliminary Approval of Proposed Settlement.** The Settlement  
19 Agreement, including all exhibits thereto, is preliminarily approved as fair,  
20 reasonable and adequate and within the range of possible approval. The Court  
21 finds that: (a) the Settlement Agreement resulted from extensive arm’s length  
22 negotiations; and (b) the Settlement Agreement is sufficient to warrant notice  
23 thereof to Settlement Class Members and a full hearing on the approval of the  
24 Settlement.

25 **2. Class Certification for Settlement Purposes.** Pursuant to Federal  
26 Rule of Civil Procedure 23(c), the Court conditionally certifies, for settlement  
27 purposes only, the following Settlement Class:  
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1 All customers who, between May 5, 2002 and the date of this  
2 Order, had a credit card account with Citibank (South Dakota),  
3 N.A. or its predecessor Citibank USA, National Association,  
4 and who paid periodic finance charges that were assessed from  
5 the beginning of a billing period in which the periodic rate was  
6 increased as a result of a default or delinquency that occurred  
7 before August 20, 2009.

8 In connection with this conditional certification, the Court makes the  
9 following preliminary findings:

10 (a) The members of the Settlement Class appear to be so numerous  
11 that joinder of all members is impracticable;

12 (b) There appear to be questions of law or fact common to the  
13 Settlement Class for purposes of determining whether this settlement should be  
14 approved;

15 (c) The claims of plaintiff Laura Hoffman ("Plaintiff") appear to  
16 be typical of the claims being resolved through the proposed settlement;

17 (d) Plaintiff appears to be capable of fairly and adequately  
18 protecting the interests of the Settlement Class Members in connection with the  
19 proposed settlement;

20 (e) For purposes of determining whether the settlement is fair,  
21 reasonable and adequate, common questions of law and fact appear to predominate  
22 over questions affecting only individual Settlement Class Members. Accordingly,  
23 the Settlement Class appears to be sufficiently cohesive to warrant settlement by  
24 representation;

25 (f) For purposes of settlement, certification of the Settlement Class  
26 appears to be superior to other available methods for the fair and efficient  
27 settlement of the claims of the Settlement Class Members.  
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1 Plaintiff is designated as class representative for the Settlement Class.

2 **3. Class Counsel.** The Court appoints Barry L. Kramer, Law Offices of  
3 Barry L. Kramer, as counsel for the Settlement Class. The Court finds that  
4 counsel is competent and capable of exercising all responsibilities as Class  
5 Counsel.

6 **4. Settlement Hearing.** A final approval hearing (the “Settlement  
7 Hearing”) shall be held before the Honorable Andrew J. Guilford, Courtroom 10D,  
8 Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street,  
9 Santa Ana, California 92701-4516, on \_\_\_\_\_ [DATE OF FINAL  
10 APPROVAL HEARING], at \_\_\_\_\_ [TIME], as set forth in the notice to the  
11 Settlement Class (described in Paragraph 5 below), to determine whether the  
12 Settlement Agreement is fair, reasonable and adequate and should be approved.  
13 Papers in support of final approval of the Settlement Agreement, the incentive  
14 award to Plaintiff and Class Counsel’s application for an award of attorneys’ fees,  
15 costs and expenses (the “Fee Application”) shall be filed with the Court according  
16 to the schedule set forth in Paragraph 11 below. The Settlement Hearing may be  
17 postponed, adjourned, or continued by order of the Court without further notice to  
18 the Settlement Class. After the Settlement Hearing, the Court may enter a  
19 settlement order and final judgment in accordance with the Settlement Agreement  
20 that will adjudicate the rights of the Settlement Class Members with respect to the  
21 claims being settled.

22 **5. Class Notice.** Class Notice shall be provided by Citibank, its  
23 designee and/or a third-party settlement administrator selected at Citibank’s sole  
24 discretion, within one hundred twenty (120) days following entry of this Order.

25 (a) **Summary Statement Notice.** Citibank shall provide  
26 individual notice to all Persons in the Settlement Class to whom Citibank mails or  
27 delivers a periodic statement in the month (or billing period) in which the mailing  
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1 or delivery will occur as to the particular portfolio at issue. At Citibank's sole  
2 discretion, the notice may be through a statement message included on the  
3 statement, a billing insert accompanying the statement, a solo mailing or a  
4 combination thereof. The Statement Notice shall direct recipients to the location  
5 of the Internet Notice and Claim Form. If mailed, the Statement Notice shall be  
6 mailed to the then-current address reflected in Citibank's computerized account  
7 records. No skip tracing or re-mailing of returned mail will be required. The  
8 Statement Notice shall be substantially in the form of Exhibit C to the Settlement  
9 Agreement.

10 (b) **Publication Notice.** Citibank shall publish a summary notice  
11 of the settlement one time in a national edition of USA Today. The Publication  
12 Notice shall direct Settlement Class Members to the location of the Internet Notice  
13 and Claim Form. The Publication Notice shall be substantially in the form of  
14 Exhibit D to the Settlement Agreement.

15 (c) **Internet Notice.** Citibank shall establish a settlement web  
16 page (which shall be distinct from and not linked to any websites belonging to  
17 Citibank) which will publish, and make available for download, a full-length,  
18 downloadable form of the Settlement Agreement, Internet Notice and Claim Form.  
19 The domain name of the website shall be selected by Citibank. The settlement  
20 web page will be established within one hundred twenty (120) days after the  
21 Court's entry of the Preliminary Approval Order and before either the Statement  
22 Notice is mailed or the Publication Notice is published and shall remain active at  
23 least until the date of the Final Approval Hearing and through the end of the Claim  
24 Period. The Internet Notice shall be substantially in the form of Exhibit B to the  
25 Settlement Agreement.

26 **6. Findings Concerning Class Notice.** The Court finds that the  
27 foregoing program of class notice and the manner of its dissemination is the best  
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1 practicable notice under the circumstances and is reasonably calculated, under all  
2 the circumstances, to apprise Settlement Class Members of the pendency of this  
3 action and their right to object to or exclude themselves from the Settlement Class.  
4 The Court further finds that the class notice program is reasonable, that it  
5 constitutes due, adequate and sufficient notice to all persons entitled to receive  
6 notice and that it meets the requirements of due process and Federal Rule of Civil  
7 Procedure 23.

8       **7. Approval of Claims Process.** The Claim Form and the claims  
9 submission process described in the Settlement Agreement are hereby approved.

10       **8. Second Amended Complaint.** Plaintiff's proposed Second Amended  
11 Complaint is deemed filed, served and controverted as of the date of this Order.

12       **9. Exclusion from Settlement Class.** Each Settlement Class Member  
13 who wishes to be excluded from the Settlement Class and follows the procedures  
14 set forth in this Paragraph shall be excluded. Any potential member of the  
15 Settlement Class must mail a written request for exclusion, in the form and to the  
16 address specified in the Internet Notice. All such written requests must be  
17 postmarked by \_\_\_\_\_ [OPT-OUT DEADLINE]. All persons who  
18 properly make requests for exclusion from the Settlement Class shall not be  
19 Settlement Class Members and shall have no rights with respect to the settlement,  
20 should it be approved.

21       **10. Objections and Appearances.**

22               **(a) Written Objections.** Any potential member of the Settlement  
23 Class who has not timely submitted a written request for exclusion from the  
24 Settlement Class, and thus is a Settlement Class Member, may object to the  
25 fairness, reasonableness or adequacy of the settlement or the Fee Application.  
26 Settlement Class Members may do so either on their own or through counsel hired  
27 at their own expense. Any Settlement Class Member who wishes to object to the  
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1 settlement or the Fee Application must, on or before \_\_\_\_\_ [OBJECTION  
2 DEADLINE], file a written objection with the Court and serve copies on: (i) Class  
3 Counsel -- Barry L. Kramer, Law Offices of Barry L. Kramer, 12428 Promontory  
4 Road, Los Angeles, California 90049; and (ii) counsel for Citibank -- Julia B.  
5 Strickland, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th Floor,  
6 Los Angeles, CA 90067. Comments or objections must be filed and served on  
7 Class Counsel and Citibank's counsel not later than \_\_\_\_\_ [OBJECTION  
8 DEADLINE]. Any objection that is not timely filed and served shall be forever  
9 barred.

10 (b) **Appearance at Settlement Hearing.** Any Settlement Class  
11 Member who timely files and serves a written objection may also appear at the  
12 Settlement Hearing, either in person or through counsel hired at the Settlement  
13 Class Member's expense, to object to the fairness, reasonableness or adequacy of  
14 the settlement or the Fee Application. Settlement Class Members or their counsel  
15 intending to appear at the Settlement Hearing must file with the Court and serve  
16 on Class Counsel and Citibank's counsel at the addresses listed above, no later  
17 than \_\_\_\_\_ [OBJECTION DEADLINE], a notice of intention to  
18 appear setting forth: (i) the name and address of the Settlement Class Member  
19 (and, if applicable, the name, address and telephone number of the Settlement  
20 Class Member's attorney); and (ii) the objection, including any papers in support  
21 thereof. Any Settlement Class Member who does not timely file and serve a  
22 written objection and the notice of intention to appear by \_\_\_\_\_  
23 [OBJECTION DEADLINE], shall not be permitted to object or appear at the  
24 Settlement Hearing and shall be bound by all proceedings, orders and judgments  
25 of the Court.

26 **11. Further Papers in Support of Settlement and Fee Application.**

27 Any responses to objections to the Settlement Agreement and any papers in  
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1 support of the Settlement and Fee Application shall be filed with the Court on or  
2 before \_\_\_\_\_ [DEADLINE TO FILE SUPPORTING PAPERS].

3 **12. Effect of Failure to Approve the Settlement Agreement.** In the  
4 event the Settlement Agreement is not approved by the Court, or for any reason  
5 the parties fail to obtain a Final Judgment as contemplated in the Settlement  
6 Agreement, or the Settlement Agreement is terminated pursuant to its terms for  
7 any reason, then the following shall apply:

8 (a) All orders and findings entered in connection with the  
9 Settlement Agreement shall become null and void and have no further force and  
10 effect, shall not be used or referred to for any purposes whatsoever, and shall not  
11 be admissible or discoverable in any other proceeding;

12 (b) The conditional certification of the Settlement Class pursuant  
13 to this Order shall be vacated automatically and void; no doctrine of waiver,  
14 estoppel or preclusion shall be asserted in any litigated certification proceedings in  
15 the Action; and the Settlement Agreement and its existence shall be inadmissible  
16 to establish any fact relevant to class certification or any alleged liability of  
17 Citibank for the matters alleged in the Actions or for any other purpose;

18 (c) Nothing contained in this Order is, or may be construed as, any  
19 admission or concession by or against Citibank or Plaintiff on any point of fact or  
20 law; and

21 (d) Neither the settlement terms nor any publicly disseminated  
22 information regarding the settlement, including, without limitation, the class  
23 notices, court filings, orders and public statements, may be used as evidence for  
24 any purpose whatsoever. In addition, neither the fact of, nor any documents  
25 relating to, Citibank's withdrawal from the settlement, any failure of the Court to  
26 approve the settlement and/or any objections or interventions may be used as  
27 evidence for any purpose whatsoever.  
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1           **13. Stay of Proceedings.** All proceedings in this action are stayed until  
2 further order of the Court, except as may be necessary to implement the terms of  
3 the settlement. Pending final determination of whether the settlement should be  
4 approved, neither Plaintiff nor any Settlement Class Member, either directly,  
5 representatively or in any other capacity, shall commence or prosecute against any  
6 of the Released Parties any action or proceeding in any court or tribunal asserting  
7 any of the Released Claims.

8           **IT IS SO ORDERED.**

9  
10 Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Andrew J. Guilford  
United States District Judge